

R7-2-405. Due Process Standards Relating to Special Education

A. Definitions. The following definitions are applicable to this rule:

1. A "due process hearing" means a fair and impartial administrative hearing conducted by the State Education Agency by an impartial hearing officer through the Arizona Office of Administrative Hearings.
2. "Impartial hearing officer" or "hearing officer" means an Administrative Law Judge ("ALJ") of the Arizona Office of Administrative Hearings ("OAH") and who is knowledgeable in the laws governing special education and administrative hearings.
3. "Public agency" (PEA) has the same definition as provided in R7-2-401.
4. "State Education Agency" ("SEA") means the Department of Education, Exceptional Student Services Division.

B. The due process procedures specified in this rule apply to all public education agencies dealing with the identification, evaluation, educational placement, or the provision of a free appropriate public education ("FAPE") for children with disabilities.

C. The SEA shall establish procedures concerning:

1. Impartial due process hearings; and
2. Confidentiality and access to student records.

D. An impartial hearing officer shall be:

1. Unbiased - not prejudiced for or against any party in the hearing;
2. Disinterested - not having any personal or professional interest that would conflict with objectivity in the hearing;
3. Independent - may not be an officer, employee, or agent of a public agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because the person is paid by the public agency to serve as a hearing officer;
4. Trained and evaluated by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of, and the provision of FAPE for children with disabilities.

E. Hearing officer qualifications and training.

1. All hearing officers shall participate in all required training and evaluation conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement, and the provision of FAPE for children with disabilities.
2. A hearing officer shall meet the requirements set forth by OAH regarding ALJs. A hearing officer shall not have represented a parent in a special education matter during the preceding 12 months, and shall not have represented a school district in any matter during the preceding 12 months.

F. Selection of hearing officers.

1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in subsection (E) to serve as hearing officers. This list shall also include the qualifications of each hearing officer.
2. A hearing officer shall be assigned in accordance with the procedures of the Office of Administrative Hearings.

G. Request for Due Process Hearing

1. A parent shall submit a written request for a due process hearing to the public education agency and the SEA. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and parents agree. If a parent requests a due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available, and provide a copy of the procedural safeguards notice. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings.
2. If the public education agency requests a due process hearing, such request shall be made on a model form, as noted in Subsection (G)(1), and a copy shall be provided to the parent and the SEA. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and the parents agree. In conjunction with its request for due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available and provide a copy of the procedural safeguards notice. All correspondence to the parent, including the due process request, shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings.

H. An impartial due process hearing shall be conducted in accordance with the following procedures:

1. The hearing officer shall hold a pre-hearing conference, either telephonically or at a location that is reasonably convenient to the parents and the child involved, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the time and dates for the hearing.
2. The hearing officer shall conduct the hearing at a location that is reasonably convenient to the parents and the child involved.

3. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner, and shall ensure that all parties involved have an opportunity to:
 - a. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
 - b. Object to the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
 - c. Produce outside expert witnesses;
 - d. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
 4. The parent involved in the hearing shall be given the right to:
 - a. Have the child who is the subject of the hearing present;
 - b. Have the hearing conducted in public;
 - c. Have an interpreter provided by the public agency; and
 5. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement, and the provision of FAPE. This shall include any Independent Education Evaluation secured by the parent.
 - a. The hearing officer shall determine whether the public agency has met all requirements of federal and state law, rules, and regulations.
 - b. The hearing officer shall render findings of fact and a decision, which shall be binding on all parties unless appealed pursuant to this rule.
 6. The hearing officer's findings of fact and decision shall be in writing and shall be provided to the parent, the public education agency, the SEA, and their respective representatives. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and decision shall be delivered by certified mail or by hand within 45 calendar days after notification to the hearing officer that the parties have been unable to resolve the matter in accordance with 20 U.S.C. § 1415(f)(1)(B). A hearing officer may grant specific extensions of time beyond the 45 calendar days for good cause shown at the request of either party.
 7. The findings of fact and decision of the hearing officer shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.
 8. Any party to the proceeding has the right to appeal a final administrative decision to a court of competent jurisdiction within 35 calendar days after receipt of the decision.
 9. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.
- I. Expedited hearing.
1. An expedited hearing regarding disciplinary matters may be requested in accordance with federal law as set forth in 20 U.S.C. § 1415(k).
 2. Hearing officers for an expedited hearing shall be assigned by the Office of Administrative Hearings.
 3. The expedited hearing shall be conducted within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.